IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 9 of 2007
to
FIRST APPEAL No. 17 of 2007

For Approval and Signature:

HON'BLE MR.JUSTICE J.M.PANCHAL

HON'BLE SMT. JUSTICE ABHILASHA KUMARI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SPECIAL LAQ OFFICER & 1 - Appellant(s)
Versus
DILUBHA HEMUBHA CHUDASAMA - Defendant(s)

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Appearance :
MS TANUJA N.KACHCHHI, AGP for Appellant(s) : 1 - 2.
MR NITIN M AMIN for Respondents-Claimants

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CORAM : HONOURABLE MR.JUSTICE J.M.PANCHAL
and
HON'BLE SMT. JUSTICE ABHILASHA KUMARI

Date : 26/02/2007

ORAL JUDGMENT (Per: HON'BLE MR.JUSTICE J.M.PANCHAL)

1. Admitted. Mr.Nitin M.Amin, learned counsel, waives service of Notice on behalf of the claimant/ claimants in each Appeal. Having regard to the facts of the case, all the Appeals are taken up for final disposal today.

2. By filing these Appeals under Section 54 of the Land Acquisition Act, 1894 (“the Act” for short), read with Section 96 of the Code of Civil Procedure, 1908, the appellants have challenged the legality of the common judgment and award dated December 30, 2005, rendered by the learned 4th Additional Senior Civil Judge, Ahmedabad (R) at Navrangpura, in Land Acquisition Case Nos.1025/1998 to 1033/1998, by which, the claimants have been awarded additional amount of compensation at the rate of Rs.28.75 ps. per sq.mt. for their acquired lands over and above the compensation offered to be paid to them by the Special Land Acquisition Officer at the rate of Rs.1.05 ps. per sq.mt. for irrigated

lands and Re.0.70 ps. per sq.mt. for non-irrigated lands, by his award dated June 7, 1996.

3. The Executive Engineer, Narmada Canal Division No.2/5, Limdi, sent a proposal to the State Government to acquire the agricultural lands of village Timbla, Taluka: Dhandhuka, District: Ahmedabad, for the public purpose of construction of canal under the Narmada Project. On perusal of the said proposal, the State Government was satisfied that the lands of village Timbla, which were specified in the proposal, were likely to be needed for the said public purpose. Therefore, the notification under Section 4 of the Act was issued which was published in the official gazette on November 24, 1993. Thereafter, necessary inquiry, as contemplated by Section 5A(2) of the Act, was made by the Special Land Acquisition Officer and on the basis of report submitted by him, the State

Government made declaration under Section 6 of the Act which was published in the official gazette on July 28, 1994. The interested persons were thereafter served with notices for determination of compensation payable to them. The claimants appeared before the Special Land Acquisition Officer and claimed compensation at the rate of Rs.30/- per sq.mt. However, having regard to the materials placed before him, the Special Land Acquisition Officer offered compensation to the claimants at the rate of Rs.1.05 ps. per sq.mt. for irrigated lands and Re.0.70 per sq.mt. for non-irrigated lands, by his award dated June 7, 1996. The claimants were of the opinion that the offer of compensation made by the Special Land Acquisition Officer was totally inadequate. Therefore, they submitted applications under Section 18 of the Act requiring the Special Land Acquisition Officer to refer their cases to the court for the purpose of determination of just amount of compensation

payable to them. Accordingly, References were made to the District Court, Ahmedabad (Rural) where they were numbered as Land Acquisition Case No.1025/1998 to 1033/1998.

4. On behalf of the claimants, witness Dilubha Hemubha was examined at Ex.27. The witness asserted before the Court that the lands acquired were highly fertile and that each claimant was growing different crops such as Groundnut, Cotton, Til, Wheat, Cumin seeds, etc. as water in abundance was available for the purpose of irrigation. According to the said witness, his village, from which the lands were acquired, was fully developed, and that meagre amount of compensation was offered to them by the Special Land Acquisition Officer. It was claimed by the witness that the boundaries of village Barvala, Village Kundal, Village Vahiya, Village Rojid, Village Ranpari, Village Khambhda and Village Sarangpur were adjoining to the boundaries of Village

Timbla from which the lands were acquired in the instant case. It was also asserted by the said witness that the lands of the villages were similar in all respects including fertility. Though this witness was cross examined by the learned counsel for the acquiring authorities, nothing substantial could be elicited nor the assertion made by the witness that the lands of village Barvala and the lands of village Timbla were similar in all respects could be demonstrated to be untrue.

5. On behalf of the acquiring authorities, witness Rameshkumar Sundarlal Bhishan, who was then discharging duties as Deputy Executive Engineer, was examined at Ex.39. This witness claimed that all the relevant factors were taken into consideration by the Special Land Acquisition Officer before determining the amount of compensation payable to the claimants, and therefore, the claimants were not entitled to enhanced

compensation. The witness produced the extract indicating the sales of lands of village Timbla, which had taken place in the last five years. However, no better particulars could be produced by him. In his cross-examination by the learned counsel for the claimants, the witness admitted that the boundaries of village Timbla were adjoining to the boundaries of village Barvala and village Kundal. The witness further mentioned that he had not seen the land which was covered by the sale-deed produced by him. The witness also admitted that he had no personal knowledge about the particulars of the sale mentioned in the sale-deed. However, the suggestion made by the learned counsel for the claimants that the land which was covered by the sale-deed was uneven and non-irrigated was denied by him.

6. On appreciation of evidence adduced by the parties, the Reference Court was of the

opinion that the previous award of the Reference Court relating to the land of village Barvala was a relevant piece of evidence for the purpose of determining the market value of the lands acquired in the instant case. Placing reliance on the said previous award, the Reference Court has awarded additional amount of compensation at the rate of Rs.28.95 ps. per sq.mt. to the claimants by the impugned award giving rise to the abovenumbered Appeals.

7. This Court has heard the learned counsels for the parties and considered the Record and Proceedings received by the Court pursuant to the order dated January 12, 2007. In the impugned award, this Court found that the Reference Court had referred to Ex.30 as the award of the Reference Court relating to the land of village Barvala whereas at another place, the Reference Court had referred to Ex.30 as relating to the lands of village Timbla. Therefore, by

another order dated February 15, 2007, the Registry was directed to call for Ex.30 which was not forming part of Record and Proceedings received from the Reference Court. In view of the direction contained in order dated February 15, 2007, this Court has received Ex.30. A perusal of Ex.30 indicates that Survey No.581/1 Paiki land admeasuring 6070 sq.mt. of village Barvala was acquired by the State Government for the purpose of Gujarat Electricity Board, Limdi, pursuant to publication of notification issued under Section 4(1) of the Act in the official gazette on December 22, 1988. Therein, the Special Land Acquisition Officer had offered compensation to the claimant at the rate of Rs.3/- per sq.mt. by his award dated April 4, 1991. Feeling aggrieved, the claimant had sought Reference and the Reference Court, by judgment and award dated January 10, 1995, awarded additional compensation to the claimant at the rate of Rs.17/- per sq.mt. It is well-

settled that the previous award of the Reference Court relating to a village which has attained finality can be relied upon for the purpose of determining the market value of the similar land subsequently acquired from the adjoining village. As observed earlier, the assertion made by the witness for the claimant that the boundary of village Barvala and that of village Timbla from which the lands were acquired in the instant case were adjoining to each other is admitted by the witness for the acquiring authorities. The claim made by the witness for the claimants that the land of village Barvala which was acquired earlier and the lands of village Timbla were similar in all respects, including fertility, could not be demonstrated to be untrue. Therefore, this Court is of the opinion that the Reference Court did not commit any error in placing reliance on the previous award of the Reference Court relating to the land of village Barvala for the purpose of

determining the market value of the lands acquired in the instant case. The calculation of additional amount of compensation awarded by the Reference Court to the claimants is not demonstrated to be untrue. On re-appreciation of facts, this Court finds that correct findings of facts have been recorded by the Reference Court to which settled principles of law have been applied. The learned Assistant Government Pleader could not persuade this Court to take a view different than the one taken by the Reference Court on appreciation of evidence adduced before it. Therefore, the Appeals, which have no merits, cannot be entertained and are liable to be dismissed.

8. For the foregoing reasons, the Appeals fail and are dismissed.

(J.M.Panchal, J.)

(Smt.Abhilasha Kumari, J.)

(sunil)